

**REMARKS**

The Office Action indicates that Claim 2 as originally filed is allowed. The stated reason for allowance is that "the prior art fails to teach a container with an evacuation device that also has a closure mechanism that selectively applies pressure to the bag to separate an upper portion of said bag from a lower portion of said bag."

Independent Claim 1 has been amended to require that the container have a closure mechanism, wherein the closure mechanism selectively applies pressure to the bag to separate an upper portion of the bag from the lower portion of the bag. Since Claim 1, as amended, includes the limitations of Claim 2 that fall within the stated reasons for allowance, it is respectfully submitted that Claim 1 as amended is allowable.

Claim 2 is cancelled, since the limitations of Claim 2 are now present in Claim 1, as amended.

Claims 3, 5, 8 and 11 are amended to change dependency from Claim 2 to Claim 1, due to the amendment to Claim 1. Claims 2-12 all depend directly or indirectly from Claim 1, and it is respectfully submitted that Claims 1-12 are in condition for allowance.

Newly added Claims 13 through 20 are submitted hereby. Independent Claim 13 requires an air eliminator that communicates with an enclosed space. According to Claim 13, the enclosed space is formed between an outside surface of the bag, and an interior portion of the container. Air is evacuated from the

enclosed space, and no material amount of additional air enters the enclosed space while the air eliminator is actuated. See Specification, page 6, lines 19-21.

The device required by Claim 1 is distinguished from *Plooy*, U.S. Patent No. 4,921,510. *Plooy* discloses a device wherein air is permitted to enter the space between the bag (5) and the housing (1). Passage 25 of Figure 1, for example, shows air flowing into the space between the bag and the container. The additional embodiments of *Plooy* shown in Figure 2 and 3, show a similar passageway or opening. See, for example, opening 44 of Figure 3.


The embodiment shown in Figure 4 of *Plooy* includes "a small passageway" 91 that applies a vacuum to the interior of the drum. However, Claim 13 is distinguished from the embodiment of Figure 4 of *Plooy*, since Claim 13 requires that the air eliminator not communicate with an interior of the bag. In *Plooy*, it is desirable to control the inflow of material to the interior of the bag by means of air flow. In the present invention, the introduction of moving air into the interior of the bag has the potential to blow cigarette ashes from the interior of the container and/or accelerate burning, and movement of air into the interior of the bag is neither desired, nor required.

Newly added Claim 14 states that the bag is pulled against an interior portion of the container as air is evacuated from the enclosed space. This feature is not shown by *Plooy*. As indicated in the Specification of the present invention, pulling the bag against the interior of the container reduces the likelihood that the bag will catch on fire if burning cigarettes are placed in the bag, which is not a concern of *Plooy*.

Title: CONTAINER FOR DISCARDED SMOKING MATERIALS  
Serial Number: 10/602,811

It is respectfully submitted that Claims 1-20 are in condition for allowance.  
Review and allowance at the earliest possible date is requested.

Respectfully submitted,



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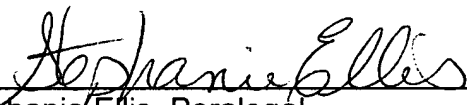
Dated: October 20, 2005

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**CERTIFICATE OF MAILING**

I hereby certify that this Response to Office Action dated July 27, 2005 and post card, are being deposited with the United States Postal Service, with sufficient postage attached thereto, in an envelope addressed to: MAIL STOP AMENDMENT, COMMISSIONER FOR PATENTS, P.O. BOX 1450, Alexandria, VA 22313-1450, on this 20th day of October, 2005.

  
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